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MASTER OF MILITARY STUDIES

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Concerns During a Time of Sustained Conflict

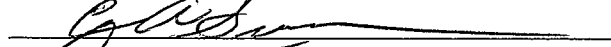
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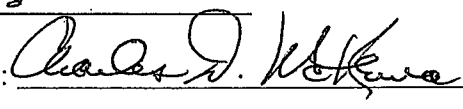
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INTRODUCTION

In his landmark article on the practice of public administration, "The Study of Administration" Woodrow Wilson established a need and a framework for a science of administration. He recognized that the complexity of modern society created an environment in which, "It is getting to be harder to *run* a constitution than to frame one."¹ Wilson emphasized that the study of administration "is closely connected with the study of the proper distribution of constitutional authority. To be efficient it must discover the simplest arrangements by which responsibility can be unmistakably fixed upon officials; the best way of dividing authority without hampering it, and responsibility without obscuring it."² In short, Wilson sought an administrative construct that was effective, efficient, and bound by constitutional authority. Some of the tools incorporated by Wilson and his followers to improve public administration were civil service reform, the professionalization of public service, and the establishment of a professional bureaucracy.³

Wilson's argument envisions public administration as an exercise distinct from politics. Over time, these reforms created a very structured, and to some an overly cumbersome government, that many believed was not efficient, responsive, or effective. This condition gave rise to a movement known as New Public Management which seeks to use business reforms to create a more effective and responsive government. The difference between these two perspectives on the role of administration in government is an argument between effective oversight (Traditional Public Administration) and increased efficiency (New Public Management). Many government agencies have moved back and forth between these extremes as they sought to reconcile oversight with

efficient responsive service. This struggle is very visible today within the Department of Defense particularly in the realm of privatization and outsourcing.

The Peace of Westphalia in 1648 established the nation state as the principal actor in international affairs and gave the state a monopoly on the employment of force.⁴ In practical terms, this meant that non-state actors such as mercenaries, businesses, guilds, and religious institutions could not employ force to resolve issues with states. Over time, the state's need to employ force led to the creation of professional military forces. The military actions of these forces eventually came under various forms of regulation such as the Geneva Conventions, which established appropriate behavior and conduct of military participants as well as defined the nature and role of combatants and non-combatants. The relevance of this to a discussion on privatization within the military is the idea that contractors fall into a gray area not covered by the Geneva Convention. As will be shown, some critics of privatization argue that contractors are akin to mercenaries and as such are illegal combatants while others make the argument that contractors are non-combatants.

This paper addresses the issue of privatization as an aspect of defense reform and argues that the use of civilian contractors on the battlefield requires increased scrutiny on fiscal, efficiency, and ethical reasons. Unless the Department of Defense employs greater oversight of these assets, the costs will outweigh the gains. This paper employs the arguments made by critics of New Public Management (NPM) to demonstrate that the movement to outsource military activities on the battlefield stresses expediency over effectiveness, efficiency, and the rule of law. Moreover, the benefits that proponents of

military privatization claim are difficult to prove while the risks to rule of law are profound.

THE ROLE OF REINVENTION

In their text, *The Reinventor's Fieldbook*, David Osborne and Peter Plastrik stress that the role of reinvention is to create organizations that always seek efficiency, adaptability, and the ability to innovate through a focus on purpose, accountability, incentives, structure, and culture.⁵ Similarly, Mark Popovich stresses a need for re-invention so that organizations can meet the demands and challenges of the current fast paced and complex competitive environment.⁶ Among the reasons Popovich mentions for re-invention are financial pressure, changes in customer base and work force, desires to decrease inefficiency and waste, and the presence of new technologies.⁷ Not everyone agrees with the goals of reinvention. Laurence Lynn argues that government reinvention, in the guise of New Public Management, does not respect law, politics, or the citizens that it claims to serve.⁸ Other critics of New Public Management are concerned that the emphasis on business practices and efficiency undercuts a requirement for democratic principles in government.⁹

The concern about underscoring democratic principles is very serious matter particularly in a time when the United States' government purportedly engages in a conflict that pits democratic ideals against the authoritarian ideology of various opponents. Ideals, and the language of ideals, matter. A review of the indexes of both the Osborne-Plastrik book and the Popovich book notes that the words ethics, morals, and morality are absent.

Under the Defense Reform Initiative and its successor Defense Transformation, privatization emerged as a means to meet the defense needs of the nation while containing costs. This was particularly evident after the U.S. Military's transition from a conscript force to an All Volunteer Force (AVF) in 1973. A reduction in force size and an increased reliance on technology offset the increased costs incurred by establishing a professional military force. Many of the reductions in force size were offset by an increasing reliance on contractors. As a result, contractors now perform many roles traditionally performed by active service members. Indeed, it is arguable that the U.S. cannot go to war without contractors.¹⁰ The introduction of military and security contractors introduces many "non-combatants" onto the battlefield. Some are under contracts to governments while others are under contract to Non Government Organizations (NGO's) and businesses. While many contractors perform support functions, a number of other contractors function as security, which introduces non-state security actors into the conflict. At the same time the U.S. argues against the rise of NSAs (terrorists, etc) its own government is responsible for the introduction of thousands of NSAs onto the battlefield. Many reports assess the cost of employing contractors in terms of dollars. While potential cost savings of employing contractors are great there is little evidence that contractors save money particularly during a time of sustained crisis. Additionally, the use of contractors on the battlefield raises a number of legal and ethical questions that are potentially more damaging to the United States than the monetary costs. The next section looks at how the movement for defense reform began and worked to spur an extensive reliance on contractors within the Department of Defense.

DEFENSE REFORM AND TRANSFORMATION

In November of 1997 Secretary of Defense William S. Cohen established a three part corporate vision in which he stated, “we will support our forces with a department that is as lean, agile, and focused as our warfighters.”¹¹ This quote forms the third part of a corporate vision envisioning, “a revolution in business affairs within DoD that will bring to the Department management techniques and business practices that have restored American corporations to leadership in the marketplace.”¹² These statements highlight several factors that keep faith with both Osborne’s and Popovich’s visions of reform: efficiency, business practices, and cutting the size of government. Several years later, Secretary of Defense Donald Rumsfeld introduced the concept of Defense Transformation, which echoed and expanded on these themes. A Congressional Research Service (CRS) Report to Congress states that transformation encompasses, “making changes in DOD business policies, practices, and procedures, particularly with an eye toward streamlining operations and achieving efficiencies so as to reduce costs and move new weapon technologies from the laboratory to the field more quickly.”¹³ The similarities to Secretary Cohen’s statement on Defense Reform are striking: business practice, efficiency, and cost reduction are at the heart of Defense Transformation.

Both the Defense Reform Initiative and Defense Transformation bear all the hallmarks of reinvention as described by Osborne, Plastrik, and Popovich. Another commonality between the concepts is also worth noting. In neither, the *Defense Reform Initiative Report* signed by Secretary Cohen in 1997 nor in *Elements of Defense Transformation* published by the Department of Defense in 2004 do the words ethics, moral, or morality appear. More striking is that while authors writing about reform and

reinvention in government stress accountability this term did not appear in either document. Left unsaid is whether an organization like the Department of Defense can and should be run along business lines and how this trend impacts the requirement for rule of law within public organizations.

COMPETITION, PRIVATIZATION AND OUTSOURCING AS ELEMENTS OF DEFENSE REFORM & TRANSFORMATION

Popovich highlights privatization and competition as two principal strategies for change. Privatization helps decrease the size of government while providing more cost effective services. Including competition within privatization is a means of keeping cost low while still meeting goals.¹⁴ Osborne and Plastrik note that competition creates economic and psychological incentives that stimulate performance. By creating situations in which there are winners and losers, competition forces the winners to deliver in the form of services.¹⁵ Other authors emphasize similar benefits to competition, privatization, and outsourcing. Savas notes the cost savings and better service brought about by these practices in New York City¹⁶ while Keetl highlights reduction in government size as well as cost savings.¹⁷ While they discuss the benefits of privatization these same authors also stress some cautions. Keetl addresses corruption, disruption of service, and lack of competition as dangers in this arena.¹⁸ E.S. Savas praises the value of competition but notes that requirements for effective contracting need to be in place to produce the desired results.¹⁹ Finally, Wallin stresses the difficulty in measuring performance and in documenting cost-savings particularly when "privatization becomes a crusade."²⁰ What all of the aforementioned authors highlight is that privatization requires oversight as well

as checks and balances to ensure that contractors remain accountable to those purchasing the contract. Without these elements, privatization does not attain the intended goals of:

- Monetary Savings
- Reduction in the Size of Government
- Increase in Efficiency & Service
- Increase in Flexibility

As the authors cited above identify, when essential oversight is missing there is a potential to increase costs and decrease efficiency. The earliest of these articles appeared in 1993 on the eve of the Defense Reform Initiative. It is clear that early on there were concerns about privatization as well as methods to help it succeed. As will be demonstrated, the Department of Defense did not incorporate many of these recommendations particularly when it came to dealing with the issue of contractors in Iraq.

The *Defense Reform Initiative Review* emphasized the value of competition between the public and private sectors and saw competition as a means to provide better service at lower cost. The report specifically stated,

Buildings must be maintained, equipment must be repaired, checks must be written. Many of these activities are now performed by uniformed personnel or civilian government workers. Often, there is no reason why this work cannot be performed by the private sector. In such cases, following the example of America's leading firms, DoD will benefit greatly by introducing the dynamic forces of competition into the procurement of support activities.²¹

The goal of incorporating business practices under Defense Transformation addresses many of these same ideas. Transformation emphasizes privatization and “best value” in contracting designed to produce better service even if the cost is greater.²² Both Defense Reform and Defense Transformation include competition, privatization, and

outsourcing among their tools for improvement. In this regard, they both view these methods in the same manner as Osborne, Pastarick, and Popovich.

AUTHORIZATIONS FOR DEFENSE PRIVATIZATION

Privatization in the military services extends back to the earliest wars. During the Revolutionary War, the fledgling Colonial Army employed civilians to drive wagons, as doctors, and for other services. This activity continued and was a standard practice in all conflicts that the U.S engaged in since.²³ Within the Department of Defense privatization predates both DRI and Transformation. Indeed, both the DoD and the military services have long used privatization and outsourcing to meet their needs. In 1954, well before the stipulations of the DRI, DoD directives instructed the military to use civilians for positions not specifically requiring a uniformed military member.²⁴ Additionally, Title 10, the statute that defines roles and mission for the U.S. Military, requires the Secretary of Defense to consider cost in determining who does a particular job and to use civilian personnel in place of military personnel if this is advantageous.²⁵

In 1983, the Office of Management and Budget published OMB Circular A-76 *Performance of Commercial Activities* establishing federal policy for the competition of commercial activities. OMB revised the circular in 1999 after the introduction of DRI and subsequently revised it in 2000 & 2003. Key provisions contained in the circular highlight ensuring that the American people receive “maximum value for their tax dollar” and to subject all activities “to the forces of competition.”²⁶

There are critiques of the mandate to outsource as contained in A-76. Proponents highlight the savings in costs and personnel attained through outsourcing while

opponents question what they consider overly optimistic claims of savings.²⁷ In line with the general concerns of privatization mentioned earlier, a GAO report noted,

The degree to which managed competitions, throughout the federal government, increase efficiency and save money will likely depend on the extent to which federal agencies enforce both the letter and spirit of the law governing FAIR. Congress can exercise its oversight authority by (1) monitoring federal agency progress in the implementation of OMB Circular A-76 policy and FAIR, and whether federal agencies meet deadlines and report promptly, accurately and completely²⁸

The current policy of the Federal Government, the DoD, and the military services requires privatization and outsourcing where use of these activities promotes cost saving and efficiency. While the requirement to privatize exists, there are concerns over what is privatized, whether the benefits of privatization occur, and the degree to which privatization occurs under both the spirit and the letter of the law. These same concerns exist in the U.S. Military today.

Since the mandate for privatization of military services occurred in 1997, major changes took place in defense structure and manning. While many of these changes occurred after 1997, the impetus for them stems from the need to downsize the U.S. military at the end of the Cold War. In this environment, the drive to privatize non-core commercial functions such as laundry, dining facilities, and other services made sense. As the military continued to downsize, agencies identified more and more items as non-core functions because this was a way in which to free operations and maintenance funds to meet demands for modernization and readiness.²⁹ The result of the downsizing was that the military reduced in size by more than 500,000 individuals in the 1990's.³⁰ This reduction in size by more than 30 percent came at a time when U.S. military commitments increased dramatically to the point where they affected unit capability and

morale.³¹ In this context, privatization and outsourcing occurred to save money needed for other projects and to make up for shortfalls in personnel cut from the services throughout the 1990's. It is also clear that the intent behind privatization and outsourcing was to replace non-core functions rather than functions deemed purely military in nature.

While the use of contractors increased during the 1990's DoD expenditures remained constant at approximately 100 billion dollars per year. This changed immediately after 9/11 and particularly after the invasion of Iraq. In 2004 the expenditure increased by 88 billion dollars over the 2000 numbers. At a time when overall military expenditures increased by 33 percent, expenditures for private services increased by 84 percent.³² On the surface, this appears to verify the claim of those emphasizing privatization that it saves money by only requiring the purchase of services when needed but this is not necessarily the case. The conflict in Iraq has raised many questions about the ability of the military to perform its role adequately. The specific critiques are that the cost savings entail hidden costs: the inability of the military to perform its role in the absence of contractors and the need for contractors to operate in hostile environments. The following section addresses some of the principal concerns about privatization: questions regarding cost savings; questions regarding manpower, efficiency, and flexibility; and most importantly, questions over the ethical considerations involved in having contractors performing military duties in a hostile environment.

QUESTIONS ABOUT PRIVATIZATION

Cost Savings

Proponents of privatization highlight the cost savings that the process can bring to an agency or organization. Savings accrue in a variety of ways such as reduction in benefits, salaried positions, liability, disability compensation, and savings on the purchase and maintenance of equipment.³³ With respect to the Department of Defense, an early estimate of privatization by the U.S. Defense Science Board predicted an annual savings of nearly \$30 billion dollars.³⁴ In addition to monetary savings, proponents also point to the ability of the military to focus on core missions, which can help make forces more effective and increase savings. Additionally, the focus on a particular function helps ensure that the contractors provide highly efficient and flexible service where needed to support the U.S. military.³⁵

Arguments against privatization highlight several items: lack of competition, higher costs for the same service, and an overestimation of savings. Detractors focus on several studies from the Government Accounting Office showing that savings are 20-30 percent below expectations. The reports highlight a failure to calculate investments costs and a lack of experience with managing competitions as reasons for lowered savings.³⁶ For savings to occur both competition and flexibility among contractors must exist.³⁷ There must also be a means of determining how effective contractors are at requiring that agents monitor and oversee the service provided by contractors.³⁸ Detractors of privatization argue that these critical factors are not present in Department of Defense contracts. Jennifer Elsea notes that, "The relative direct cost advantage of contractors can vary, and may diminish or disappear altogether, depending on the circumstances and contract conditions."³⁹ In many instances either very limited or no competition exists for

contracts awarded by the Department of Defense. Additionally, collusion among competing firms, long-term contracts, and low bidding to add costs later prevent the benefits gained through competition.⁴⁰ Another author highlights Halliburton's no bid contract for rebuilding in Iraq and the process of blanket purchases by the Department of Defense which allows government departments to piggy-back on each other's contracts without requiring bids. This method enabled the CACI Company to provide interrogators to the Department of Defense in Iraq without competition.⁴¹ What is important to note is the fact that competition is one of the main requirements to realize savings but agencies ignore the competitive process for expediency. Moreover, current rules permit the agencies to award contracts without competition.⁴²

Lack of oversight is another item that results in reduced savings and increased costs. For agencies to realize savings, "careful and critical evaluations are needed to identify the efficiency boundaries between the public and private activities when providing defense activities."⁴³ The implication is clear; agencies must enter the privatization process after having carefully studied the costs and benefits and with a plan to assess progress. Despite this understanding, the Department of Defense fails to monitor contractors particularly in Iraq.⁴⁴ This lack of oversight results in overbilling in some instances by more than 40 percent.⁴⁵ Oversight also extends to the requirements of the contract. Inexperienced government contractors may fail to identify every item needed to fulfill a contract resulting in a need to renegotiate for services often at much higher prices.⁴⁶ Competition, flexibility, and oversight are requirements for privatization to work as intended. Within the Department of Defense, these elements have been lacking. A study by RAND in 2000 concluded that there are some savings brought about by

privatization in the DoD but that these savings stem from the use of fewer people and downgrading of positions. The same report noted that there are many tradeoffs with privatization and that more detailed analysis is required for a full assessment.⁴⁷ This highlights an issue noted by other authors, namely that a detailed analysis of the cost effectiveness of privatization is impossible because the auditing and oversight requirements do not exist.⁴⁸ Privatization may indeed be saving the Department of Defense money but, in light of multiple reports questioning the levels of competition and the decided lack of oversight, this is doubtful.

Manpower, Efficiency, & Flexibility

A second claim regarding privatization is that it permits a reduction in force size while increasing both efficiency and flexibility. Deborah Avant notes that private military companies provide a surge capacity allowing organizations to field as many forces as needed to support operations.⁴⁹ Moreover, rather than providing generalists these companies provide the “kind of forces most needed.”⁵⁰ This capability enables governments to reduce long-term manpower in favor of the ability to contract for services when and where needed saving money over time. Viewed from this perspective the manpower reductions claimed by proponents of privatization do indeed exist. This report noted earlier the reduction in US military force size by more than one third between the end of the Cold War and 2002. Once hostilities commenced in Iraq and Afghanistan augmenting with privatize, contracted personnel made up for manpower shortfalls in various services. The questions remains: does privatization provide the efficiency and flexibility needed for the mission?

As noted earlier contracting agents must ensure that contracts cover all eventualities. However, war is a complex environment filled with friction, uncertainty, fluidity, disorder, and complexity.⁵¹ Contracts are legal documents that cannot cover every possible contingency particularly those as varied and complex as occur in war. When mission requirements change, contractors must re-write contracts incurring additional costs.⁵² Contracts, by their very nature, are inflexible. Moreover, current regulations only permit designated contracting officers to direct contract activities.⁵³ This results in a situation where the commander, the one for whom the contract is written, does not have legal authority over contractors. Authority rests with the contracting officer.⁵⁴

This lack of flexibility and efficiency is not just a factor of combat environments but also occurs in garrison environments. Privatized weapons handling at the Navy's Seal Beach Weapons Station brought allegations of decreased safety, threats of strikes and work stoppages, and concerns that cost and efficiency concerns would reduce service rather than increase it.⁵⁵ Similar concerns accompanied a privatization of aircraft maintenance at Andrews Air Force Base. In this instance, commanders lost day-to-day control over maintenance operations. Moreover, contractors wrote statements of work in an inflexible manner resulting in a further lack of control.⁵⁶ Even in situations where specific job flexibility is not an issue, the matter of security highlights a particular difference between the military member and the privatized worker. Commanders have a requirement to provide security and force protection for contracted employees.⁵⁷ Uniformed and armed services members, performing these same jobs, are capable of providing their own security. Thus, privatization strips one of the key elements any

commander has in increasing flexibility, freedom of action to improvise with personnel.⁵⁸

At one level privatization increases flexibility but at another it decreases flexibility. A key factor in deciding to privatize may lie not in identifying jobs that are inherently military or governmental in nature as prescribed in regulation but rather in identifying those functions that are the most stable. This suggests that privatization is more applicable to the strategic and operational levels than to the tactical level particularly in a combat environment.

Legal & Ethical Considerations

A final area for discussion concerns the legal and ethical considerations of outsourcing. The legal focus involves one aspect already discussed, details of the contract, as well as the contractor's status under international convention and the ability to hold them accountable for crimes. When privatization initially occurred, the DoD identified core functions and competencies that were inherently military and focused on outsourcing positions that did not fall under the category of core tasks and functions. However, duties that on the surface do not appear as core functions can in actuality be core functions. An example would be a civilian truck driver employed to move ammunition, troops, and equipment around Iraq or Afghanistan. This driver performs a routine task that under certain circumstances is inherently military in nature. Current diplomatic, economic, judicial, and military techniques focus on relationships between nation states and do not necessarily have provisions for non-state actors.⁵⁹

The legal status of contractors has come into question in this latest conflict particularly where individuals accuse contractors of crimes. Deborah Avant notes that laws of war as they relate to contractors are unclear.⁶⁰ Additionally, until recently civilian

contractors to the DoD were not subject to the Uniform Code of Military Justice (UCMJ). In the 2007 Defense Authorization Act Congress included verbiage to make every civilian contractor operating in a combat zone subject to the discipline of the UCMJ. While this legislation brings some regulation to contractor behavior, there remain questions regarding interpretation and enforcement.⁶¹ A Department of Defense memo issued, 25 September 2007 stated the following

DoD contractor personnel (regardless of nationality) accompanying U.S. armed Forces in contingency operations are currently subject to UCMJ jurisdiction. Commanders have UCMJ authority to disarm, apprehend, and detain DoD contractors suspected of having committed a felony offense in violation of the RLTF, or outside the scope of their authorized mission, and to conduct the UCMJ pretrial process and trial procedures currently applicable to the courts-martial of military service members. Commanders also have available to them contract and administrative remedies, and other remedies, including discipline and possible criminal prosecution.⁶²

Despite the aforementioned legislation and Deputy Secretary of Defense Gordon England's memo, the provisions may not be enforceable particularly for non-US citizens. The true test of this measure of accountability will probably come in the courts.

The legal status of contractors relative to the Law of Armed Conflict is also unclear. The question: technically are they combatants or non-combatants? As non-combatants, they should be safe from attack but as many of the contractors perform military tasks this could make them subject to attack. Dr. Paolo Tripodi, the Ethics Chair at Marine Corps University, holds that contractors accompanying a military force are legitimate military targets while engaged in the performance of their duties.⁶³ This issue clearly concerns members of the military. Writing in *Army Logistician*, Richard Hornstein notes that commanders have a responsibility to protect contractors but have limited means at their disposal. He expresses particular concern about the nature of the

terrorist threat and their willingness to target contractors on the battlefield. He goes on to describe a Catch -22 situation in which commanders provide security to convoys and this same security functions as a means of drawing more enemy fire on the convoys.⁶⁴ As of this writing, nearly 1000 civilian contractors have been killed in Iraq and Afghanistan many of them fulfilling support roles evidence that at a minimum the opposing force considers these individuals legitimate targets.⁶⁵

Article 13 of the Hague Convention appears to allow governments to treat contractors as prisoners of war rather than non-combatants if captured. This distinction is important because if the United States agrees that those contracted by the DoD and other agencies be accorded the same rights and status as POW's under the convention, it could undermine the argument for holding illegal combatants at Guantanamo Bay and other prisons without according them POW status. Thus, according to authors Caparini & Schreier, the legal murkiness of contractors is a real problem of the United States government.⁶⁶ American officials create more confusion when they fail to define contractor status. One author notes that the U.S. government allows contractors to carry weapons when authorized by the local commander but also notes that contractors may give up their non-combatant status by arming themselves. Additionally, while the United States maintains that contractors are not combatants many of the contractors view their role whether support or security, as that of a combatant.⁶⁷

The use of contractors in military roles extends beyond the need for personal security. Within the Air Force there has been increased use of contractors to maintain and pilot unmanned aerial vehicles (UAVs). During the early stages of Operation Enduring Freedom more than 50 civilians deployed in support of the first combat deployment of

the RQ-4A Global Hawk unmanned aerial vehicle (UAV). The civilians functioned as pilots and maintainers earning high praise from Secretary Rumsfeld for their efforts.⁶⁸

Left unsaid was the combatant status of civilian UAV pilot conducting reconnaissance for the U.S. Government. This will be of increasing concern as the Unmanned Combat Aerial Vehicle (UCAV) comes on line, introducing civilian pilots into a combat role. The author of this same article highlights the incongruity of the U.S position on contractors as non-combatants noting that:

Consequently, if an individual takes part in hostilities without being a member of the armed forces (does not meet all of the four previously mentioned criteria), that person is an unlawful combatant, not just a noncombatant. An unlawful combatant is an individual who is not authorized to take part in hostilities but does so anyway whereas a noncombatant is a person who is not authorized to take an active role or direct part in hostilities and does not. The key term here is does not. If they are noncombatants and take a direct or active role in hostilities, then they are unlawful combatants. Civilians who accompany the force in deployed military operations are considered noncombatants. According to the Air Force, "Civilian contractor personnel accompanying Air Force forces are not combatants and must not be allowed to act as combatants during Air Force operations."⁶⁹

The above statement makes one thing abundantly clear, the issue of contractor status is complex and confusing. In this instance, the Air Force maintains that a civilian contract employee, piloting a military reconnaissance vehicle is a non-combatant despite the civilians participation in what is inherently a military activity. International convention is clearer on the subject of combatant status. As noted above a person is an unlawful combatant if they are not authorized to take part in military activity but do so anyway. By this standard, a civilian contractor engaged in an inherently military activity is an unlawful combatant yet the U.S. refuses to recognize this and insists that civilians contracted by the United States are non-combatants. At the same time, the U.S. maintains that civilian individuals detained in Afghanistan for engaging in inherently military

activities are unlawful combatants. This incongruity has the potential to expose the United States to charges that it is being dishonest in addressing this issue.

A final concern over the use of contractors is the potential to employ them as proxies and the impact that this could have on civil-military relations. Avant notes employing contractors provides an advantage to the executive branch over the legislative branch by reducing transparency and increasing private influence in the policy process.⁷⁰ In a separate article, Avant highlights the ability of contractors to undermine the nation states collective monopoly on violence. By hiring contractors, particularly security contractors, the U.S., and other nations make it difficult for other nations to exercise control within their borders.⁷¹ There is also potential to hide the cost of war by using contractors. Deaths and injuries of contractors are not included in official body counts and can be hard to identify. One technique to do so is to review U.S. Department of Labor injury and death claims but this may not count foreign nationals who do file claims.⁷² Jeremy Scahill notes that the lack of transparency and comprehensive bookkeeping makes it impossible to demonstrate how much money the U.S. Government has paid to security contractors and that there is no publically verifiable information on the nature of the private military organizations that the U.S. Government hires.⁷³

CONCLUSION

This report began with an examination of the role and responsibility of public administration and the concerns that some authors express about New Public Management's approach to meeting public requirements. The author contrasted Lynn's cautions on the lack of respect for law and politics evidenced by practitioners of New Public Management with Osborne and Popovich's claims that New Public Management

would bring effective government at a reasonable price. The history of defense privatization in the United States displays elements of both views. Without accurate oversight and tracking, agencies will be unable to verify or disprove arguments for or against privatization. Efficiencies and flexibility created at one level are offset by inefficiencies and lack of flexibility at another level. Effectiveness and efficiency contrast with the rule of law and potentially undermine the state's role as sole employer of force. It is clear that DoD privatization is here to stay but it is also clear that it is not functioning as intended. The current structure requires increased competition and oversight to be effective. Additionally, Congress needs to continue to fulfill its mandate to legislate and check potential abuse of power by the executive. The inclusion of contractors under the provisions of the UCMJ is a first step. These actions demonstrate that privatization can work but that it requires both the procedures of reform and the stability provided by the traditions of bureaucracy to ensure accountability. Dobel emphasized that both approaches apply and, "We can learn from each other and draw on the knowledge and wisdom of the past as well as the excitement and energy of the present."⁷⁴ It is in this middle ground that reform and accountability will perform best for the American people.

NOTES

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⁸ Laurence Lynn, "The Myth of the Bureaucratic Paradigm", *Public Administration Review (PAR)* 61, no. 2 (2001):154

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